

MAY 03 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JACKSON BRYANT BAUGUS,

Defendant - Appellant.

No. 05-30618

D.C. No. CR-02-00133-SEH

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Montana
Sam E. Haddon, District Judge, Presiding

Submitted April 13, 2006^{**}

Before: SILVERMAN, McKEOWN, and PAEZ, Circuit Judges.

Jackson Bryant Baugus appeals the district court's September 28, 2005, order confirming his 319-month sentence following this court's remand in *United States v. Baugus*, No. 04-30133 (memorandum disposition June 28, 2005), in

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

which we directed the district court to conduct further proceedings in light of *United States v. Booker*, 543 U.S. 220 (2005), and *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005) (en banc).

Baugus contends that his sentence remains infirm under the Sixth Amendment because the district court confirmed a sentence that included an enhancement under U.S.S.G. § 3B1.1 (organizer, leader, manager, or supervisor) based on facts found by the district judge rather than proved to a jury beyond a reasonable doubt. This contention is meritless because the district court applied on remand the very procedure prescribed by this court to remedy the constitutional infirmity of letting stand a sentence based on judge-found facts under mandatory Sentencing Guidelines – *i.e.*, it determined that the original sentence would not have been materially different had it known the Guidelines were advisory. *Id.*, at 1084.

Because Baugus does not otherwise argue that his sentence, as confirmed, is unreasonable, we affirm. *United States v. Cantrell*, 433 F.3d 1269, 1281 (9th Cir. 2006) (explaining that we do not reach whether a sentence is reasonable in light of 18 U.S.C. § 3553(a) where the defendant challenges the sentence only on other grounds).

AFFIRMED.